

1 Mark A. Fuller (AZ Bar No. 012149)
 2 Kenneth M. Motolenich-Salas (AZ Bar No. 027499)
 3 Christopher W. Thompson (AZ Bar No. 026384)
 4 Gallagher & Kennedy, P.A.
 5 2575 East Camelback Road
 Phoenix, Arizona 85016-9225
 Telephone 602 530 8000
Attorneys for Defendant Nationwide Marketing Services, Inc.

6 **UNITED STATES DISTRICT COURT**
 7 **DISTRICT OF ARIZONA**

8 Experian Information Solutions, Inc.,

Case No. 2:13-cv-00618-SPL

9 Plaintiff,

10
REPLY IN SUPPORT OF
DEFENDANT'S REQUEST TO
RENEW MOTION TO EXCLUDE OR,
ALTERNATIVELY, TO FILE
AMENDED MOTION TO EXCLUDE

11 v.

12 Nationwide Marketing Services, Inc.,

13 Defendant.

14
 15 Natimark filed a simple one-paragraph request to re-urge a motion the Court
 16 previously denied without prejudice – a request filed at the very procedural stage the Court
 17 indicated the motion would be ripe. Anticipating an objection that the motion was not
 18 narrowly tailored to the summary judgment briefing, Natimark also indicated that it was
 19 prepared to submit a revised motion addressing the specific expert “evidence” that
 20 Experian has now sought to introduce. In response, Experian has filed a 1 1/2 page
 21 opposition which argues (a) that the earlier motion is overbroad (“scattershot”) as it relates
 22 to the summary judgment briefing; and (b) that the previous motion should have been
 23 inserted into the summary judgment reply. We already addressed the first argument, and
 24 remain willing to file a pared-down motion now that the issues have been narrowed. As
 25 for the latter argument, we did in fact argue in our reply (on page 8) that the evidence in
 26 question is inadmissible, and cited the reasons why. (Doc. 263). Rather than taxing the
 27 Court’s patience by rehashing what had already been filed in greater detail, we also referred
 28 back to the earlier motion. (*Id.* at 8, n. 7.) That was and is a perfectly reasonable and

1 efficient approach under the circumstances.
2

3 It is axiomatic that motions for summary judgment are decided solely on admissible
4 evidence. Fed.R.Civ.P. 56(e); *Orr v. Bank of Am., NT & SA*, 285 F.3d 764, 773-74 (9th Cir.
5 2002). Thus, consistent with the Court's prior orders, this is an appropriate time to
6 consider the admissibility of "facts" offered by Experian. We respectfully ask the Court to
7 do so, either by considering the earlier motion denied without prejudice, or by granting
8 leave to file a comparable motion narrowly directed to what appears in the summary
9 judgment briefing.

10 RESPECTFULLY submitted this 9th day of February, 2016.

11 GALLAGHER & KENNEDY, P.A.

12 By: s/ Mark A. Fuller

13 Mark A. Fuller
14 Kenneth M. Motolenich-Salas
15 Christopher W. Thompson
Attorneys for Defendants

16
17 **CERTIFICATE OF SERVICE**

18 I hereby certify that on February 9, 2016, I electronically transmitted the attached
19 document to the Clerk's Office using the CM/ECF System for filing and transmittal of a
20 Notice of Electronic Filing to the all CM/ECF registrants of record in this action.

21 s/ Carolyn Sullivan
22

23
24 5233516v1/24860-0001
25
26
27
28